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REGISTER OF ACTIONS

[CASE No. 19CV00026](#)

Premier Automation Contractors, Inc. vs Everest National Insurance Company

§
§
§
§
§

Case Type: **Contract**
Date Filed: **01/02/2019**
Location: **Washington**

PARTY INFORMATION

Defendant **Everest National Insurance Company**
PO BOX 830
Liberty Corner, NJ 07938

Attorneys

Plaintiff **Premier Automation Contractors, Inc.**
4099 Dolan Dr.
Flint, MI 48504

DANIEL J DICICCO
Retained
503 967-3996(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS
01/02/2019 [Complaint](#)
Created: 01/02/2019 10:53 AM
01/02/2019 **Service**
Everest National Insurance Company Unserved
Created: 01/02/2019 10:53 AM

FINANCIAL INFORMATION

	Plaintiff Premier Automation Contractors, Inc.	
	Total Financial Assessment	265.00
	Total Payments and Credits	265.00
	Balance Due as of 02/08/2019	0.00
01/02/2019	Transaction Assessment	265.00
01/02/2019	xWeb Accessed eFile Receipt # 2019-01865 Premier Automation Contractors, Inc.	(265.00)

<https://publicaccess.courts.oregon.gov/PublicAccessLogin/CaseDetail.aspx?CaseID=31399...> 2/8/2019

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

PREMIER AUTOMATION
CONTRACTORS, INC.,

Case No.

Plaintiff alleges as follows:

1.

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1 Plaintiff now seeks a declaratory judgment to interpret the subject insurance policy and to
2 determine that the incident is in fact covered under the terms of the policy.

3 **JURISDICTION**

4 **2.**

5 This court has jurisdiction because this action is brought in accordance with ORS 28.010-
6 28.160, Oregon's Uniform Declaratory Judgments Act, seeking "to settle and to afford relief
7 from uncertainty and insecurity with respect to rights, status, and other legal relations" relevant
8 to Plaintiff. Specifically, ORS 28.030 specifies this Court's power to construe a contract before
9 or after there has been a breach thereof.

10 Plaintiff is a Michigan corporation doing business throughout the United States including
11 in Oregon. The death of the employee occurred in Washington County, Oregon, and the
12 adjudication of the decedent's workers' compensation benefits will likely fall under the purview
13 of Oregon's workers' compensation system.

14 Defendant is a Delaware corporation doing business throughout the United States
15 including in Oregon.

16 **VENUE**

17 **3.**

18 Venue is appropriate in Washington County because the death of the employee occurred
19 in this county and because the dispute concerns whether insurance coverage for this event
20 extends to work performed in the State of Oregon.

21 **BACKGROUND**

22 **4.**

23
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1 Plaintiff Premier Automation Contractors, Inc., (“Premier”) is a skilled trades staffing
 2 service providing skilled workers - such as electricians - to job sites around the country.

3
 4 **5.**

5 Defendant Everest National Insurance Company is a national insurance company that
 6 offers workers’ compensation insurance, general liability insurance, and other insurance
 7 coverage to businesses across the United States.

8 **6.**

9 Plaintiff purchased a workers’ compensation insurance policy from Defendant under
 10 policy # 8600000097161. That policy was later renewed under policy # 8600000097171 (“the
 11 Policy”). The effective date on the Policy ran from 11/3/2017 through 11/3/2018.

12 **7.**

13 The Policy coverage is described in an “Insurance Policy Information Page” which lists,
 14 among other information, the coverage period, coverage amount, and covered states. The details
 15 of the Policy are described in a multipart agreement attached to the Insurance Policy Information
 16 Page.

17 **8.**

18 The Policy Information Page, Item 3.A. lists five States for primary workers’
 19 compensation insurance coverage: – CA, KY, MI, NV, and TN. The states are listed as being
 20 covered by “Part One” of the Policy, which describes the general conditions and extent of
 21 coverage.

22 **9.**

23 “Part Three” of the Policy, entitled “OTHER STATES INSURANCE”, describes how the

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1 Policy can be extended to provide workers' compensation insurance coverage for work
2 performed in other states if the insured begins work in a state not in the primary coverage area
3 within the effective date of the Policy. Part Three of the Policy reads verbatim:

4 -----
5 **PART THREE**
6 **OTHER STATES INSURANCE**

7 **A. How This Insurance Applies**

- 8 1. This other states insurance applies only if one or more states are shown in
9 Item 3.C. of the Information Page
10 2. If you begin work in any one of those states after the effective date of this
11 policy and are not insured or are not self-insured for such work, all provisions
12 of the policy will apply as though that state were listed in Item 3.A. of the
13 Information Page.
14 3. We will reimburse you for the benefits required by the workers compensation
15 law of that state if we are not permitted to pay the benefits directly to persons
16 entitled to them.
17 4. If you have work on the effective date of this policy in any state not listed in
18 Item 3.A. of the Information Page, coverage will not be afforded for that state
19 unless we are notified within thirty days.

20 **B. Notice**

21 Tell us at once if you begin work in any state listed in Item 3.C. of the Information
22 Page.
23 -----

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10.

The Insurance Policy Information Page, Item 3.C., shows a list of each of the 50 states except for the states listed in Item 3.A. of the information page. Oregon (labeled as “OR”) is specifically included.

11.

On or about September 14, 2018, Plaintiff began preparations to send staff to Oregon to perform work on a job site. Pursuant to Part Three of the Policy, section A.4, Plaintiff notified Defendant of its intent to employ workers in Oregon prior to the start of the job.

12.

In response to Plaintiff’s notice of its intent to send employees to Oregon, Defendant subsequently filed a “Certificate of Liability Insurance” with the State of Oregon Construction Contractors Board confirming that it provided workers’ compensation insurance to Plaintiff via Policy # 8600000097161.

13.

On December 6, 2018, approximately 9 weeks after the death of the employee, Defendant transmitted notice to Plaintiff denying that the Policy provides coverage both in Oregon where the incident occurred and in Wisconsin where the decedent resided. This exposes Plaintiff to uninsured liability for the death of the employee both in the workers’ compensation system and in common law tort.

FIRST CLAIM FOR RELIEF

(Count I – Declaratory Relief)

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14.

Plaintiff re-alleges the preceding paragraphs set forth above and incorporates them herein by reference.

15.

Plaintiff complied with all of its duties under the terms of the Policy, including payment of premiums and all notice provisions concerning Other States Insurance as described in Part Three of the Policy.

16.

Defendant has breached its contract with Plaintiff by refusing to honor the terms of the Other States Insurance provisions described in the Policy.

17.

Plaintiff expects the employee's estate to file an Oregon workers' compensation case against it. If the Oregon Workers' Compensation Division determines Plaintiff was a "Non-Compliant Employer" that did not carry workers' compensation insurance, Plaintiff will be exposed to tort liability in addition to administrative penalties. Plaintiff has uncertainty and insecurity with respect to its rights, status, and other legal relations pertaining to the Policy.

ALTERNATIVE CLAIM FOR RELIEF

(Count II – Fraud & Estoppel)

18.

Plaintiff re-alleges the preceding paragraphs set forth above and incorporates them herein by reference.

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19.

Defendant knowingly and intentionally deceived Plaintiff into believing that the Policy provided insurance coverage throughout the United States under the “Other States Insurance” section of the Policy. Defendant collected the insurance premiums, provided the State of Oregon with a Certificate of Liability Insurance stating that it provided workers’ compensation insurance to Plaintiff, and acted in every way as if it the bargained-for coverage existed during all of its communications with Plaintiff.

20.

When Defendant filed a “Certificate of Insurance” with the State of Oregon, Defendant made a material representation to Plaintiff that it provided coverage in the State of Oregon. Plaintiff relied on this representation to send its employee to Oregon to perform work.

21.

Defendant failed to reveal or disclose material facts involving the subject matter of the Policy, to wit: that Defendant’s interpretation of the Policy was that it did not provide workers’ compensation coverage for work performed in Oregon. Defendant’s silence created in Plaintiff a false impression that Defendant was providing insurance coverage – an impression that was magnified by the affirmative act of Defendant when it filed the Certificate of Insurance. Defendant knew that its silence would create a false impression in Plaintiff and Defendant intended Plaintiff to rely on that false impression.

22.

Plaintiff has suffered a change in position as a result of the representations (or lack

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1 thereof) of Defendant because it is now facing the prospect of defending a wrongful death tort
2 claim and a non-compliant penalty action by the Workers' Compensation Division based on a
3 failure to carry proper workers' compensation insurance.

4 **WHEREFORE**, Plaintiff prays for relief as follows:

5 A. Entry of a Judgment on Plaintiff's First Claim for Relief:

- 6 a. Declaring that the Other States Insurance provision of the Policy specifically
7 provides coverage for work performed in the State of Oregon and that
8 Defendant is bound to abide by the terms of the Policy

9 B. As an alternative to Plaintiff's First Claim for Relief:

- 10 a. Entry of a Judgment that Defendant committed silent fraud against Plaintiff
11 and that the Policy must be affirmed to provide the agreed-upon coverage
12 under the Other States Insurance provisions of the Policy.
13 b. Entry of a Judgment that Defendant is equitably estopped from denying
14 coverage under the Other States Insurance provisions of the Policy
15 c. Entry of a Judgment that promissory estoppel shall prevent Defendant from
16 denying coverage under the Other States Insurance provisions of the Policy.

17 C. Such other and further relief as the court deems just and equitable

18 DATED this 2nd day of January, 2018

19
20 BY:



21
22 Daniel DiCicco, OSB 073730
23 dan@diciccolegal.com
24 Attorney for Plaintiff
25

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